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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1452.

JOHN J. SCARSELLETTI,

Petitioner,

v.

AETNA CASUALTY & SURETY COMPANY,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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AETNA CASUALTY & SURETY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, John J. Scarselletti, respectfully prays this court for the issuance of a Writ of Certiorari to Review the per curiam order of the Supreme Court of Pennsylvania entered January 9, 1968, denying the appellant's petition for continuance and the appeal having been taken from an Interlocutory Order of the Philadelphia Common Pleas Court #4, heard in Common Pleas Court #10, October 10, 1967, is Quashed and Rule to consolidate Moot. By per curiam order entered February 19, 1968, the Supreme Court of Pennsylvania denied a Petition for Reconsideration thereof.

OPINION BELOW.

No opinion was filed by the Supreme Court of Pennsylvania.

No opinion was filed by the Common Pleas Court #10 of Pennsylvania.

JURISDICTION.

1. The per curiam order of the Supreme Court of Pennsylvania refusing to allow a Petition for Continuance and the appeal having been taken from an Interlocutory Order, of the Philadelphia Common Pleas Court #4, heard in Common Pleas Court #10, October 10, 1967, is Quashed, and Rule to consolidate Moot was filed January 9, 1968, and a timely Petition for Reconsideration thereof filed January 19, 1968, was denied on February 19, 1968. The Petition for Certiorari was filed within ninety days of the denial of the Petition for Reconsideration. This Petition for Rehearing is filed within twenty-five days of the June 10, 1968 Order of this Court, denying the Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.

2. The jurisdiction of your Honorable Court is invoked under the provisions of 28 U. S. C., Sec. 1257(3).

QUESTION PRESENTED.

Was the court's refusal to grant Petitioner a continuance until the next session so that the records of the lower court could be made available, an opinion on the Rules filed, the many breaches of the Rules of Civil Procedure by the defendant reviewed, and the quashing of the Appeal from the Judgment of the Philadelphia Common Pleas Court No. 4, heard in Common Pleas No. 10, without a hearing, a denial of his rights guaranteed by the 5th Amendment to the Constitution of the United States as embodied in the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED.

AMENDMENT V.

"No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger: nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE.

As the result of a fire at the Petitioner's home October 31, 1964, Action was initiated against the Aetna Casualty and Surety Company, the insurer, by a Summons in Assumpsit filed October 27, 1965 and served on the defendant November 1, 1965, Philadelphia Common Pleas No. 4, September Term, 1965, No. 2696.

The Petitioner filed a Complaint in Assumpsit, June 3, 1966 for the amount of $32,000.00, the limit of the insured's insurance policy. June 24, 1966 the defendant filed their answer to the Petitioner's Complaint. Case No. 2696.

January 3, 1967 the Petitioner filed his Entry of Appearance to act as his own counsel in this matter. I. P. P.

On January 10, 1967, a Praecipe was filed withdrawing Thomas E. Byrne, Jr., Esquire, as attorney for the defendant and the Entry of Appearance for Michael E. Quinlan, Esquire, on behalf of the defendant, Aetna Casualty and Surety Company.

On February 15, 1967, the Petitioner filed his first Petition for Special Listing C. T. L. #38802.

On March 13, 1967 the Defendant filed their Answer to the above Petition.

On March 17, 1967, the Petitioner filed Preliminary Objections to the Defendant's Answer.

On March 20, 1967, the first Petition for Special Listing was disallowed.

On June 8, 1967, the Petitioner filed his second Petition for Special Listing which was allowed by the Administrative Judge of the Philadelphia Common Pleas Court, July 11, 1967, thereby closing all future Discovery and Pleadings in case #2696.

The Petitioner was officially notified of the granting of the Special Listing by the Deputy Administrator for Civil Listings on August 2, 1967. On August 8, 1967, the Petitioner notified the defendant that his Petition for Special Listing was granted July 11, 1967.

On August 16, 1967, the Petitioner initiated a second suit by a Complaint in Assumpsit for $100,000.00 which cause of action being of collateral issue for aforementioned suit No. 2696, Philadelphia Common Pleas June Term, 1967, Case No. 5528.

On September 12, 1967, the defendant filed their Answer to the Petitioner's Complaint of the second suit, #5528.

On September 8, 1967, the Petitioner sent the defendant a stipulation to consolidate the two above mentioned cases, by agreement of counsel but no immediate response was received from the defendant in regard to the acceptance of this stipulation.

On September 14, 1967, the defendant filed a rule on the Petitioner why the defendant may not file an amended answer to case No. 2696. However, the Petitioner was not notified by the defendant of the filing of the above-mentioned Petition nor was a copy of same sent to the Petitioner.

On September 22, 1967 the Petitioner filed a Rule on the defendant to Show Cause why case #2696 should not be consolidated with Philadelphia Common Pleas, June Term, 1967, #5528, with the scheduled hearing of this Petition October 10, 1967.

On September 22, 1967, the Petitioner sent the defendant a copy of the above-mentioned Petition and requested a copy of the defendant's Petition for Leave to Amend Answer filed on September 14, 1967 which the Petitioner learned of through his constant examination of the docket entries.

On September 22, 1967, the Petitioner received from the defendant the original Stipulation to Consolidate properly executed for court approval.

On September 28, 1967, the Petitioner sent the above mentioned Stipulation to the Court for approval and was filed September 29, 1967. In view of the Stipulation to Con-

solidate by agreement of counsel filed this date, the Petition to Consolidate already scheduled for a hearing Oct. 10, 1967 should have been withdrawn by the Motion Court.

Due to the special preference listing granted July 11, 1967, case No. 2696 was put in the jury trial pool September 28, 1967. The Petitioner requested to see the calendar judge of the court in regard to the listing of case No. 2696 for trial in respect to the defendant's scheduled hearing of October 10, 1967 on their Petition for Leave to Amend Answer, filed September 14, 1967. The calendar judge granted the defendant's request for discovery time for Case No. 5528 which was consolidated with case No. 2696 and the special listing for case No. 2696 was stricken for the defendant to complete his discovery, but no action for further discovery has been taken by the defendant to the present time.

On September 28, 1967, The Petitioner received his copy of the defendant's Petition to Amend Answer, filed September 14, 1967, as previously requested by the Petitioner. The copy was neither conformed as to being a true copy or with notice to plead within 20 days. Because the hearing of this Petition was scheduled for October 10, 1967, the Petitioner should have received his copy sooner in order to afford him the proper time to answer the pleading.

On October 10, 1967, the court ordered a rule absolute to file an amended answer and the Petition to Consolidate which was supposedly withdrawn and not mentioned at the hearing is moot.

As a result of the orders of October 10, 1967, the Petitioner filed an appeal and affidavit in the Supreme Court of Pennsylvania on October 19, 1967 and a writ of certiorari was issued for the records of the lower court, No. 133, January Term, 1968.

On October 19, 1967, the Petitioner sent to the defendant, Notice of Appeal and Praecipe for Appearance in the

above captioned case for his signature of acceptance of same to be returned to the Petitioner for filing in the lower court. The acceptance was signed by the defendant and returned to the Petitioner for filing, November 17, 1967.

On October 19, 1967, the Petitioner sent to the Honorable Edward J. Bradley, Judge of the Common Pleas Court, Notice of Appeal and Acceptance of Service for his signature of same which was also to be returned to the Petitioner for filing, but no response was received.

On October 19, 1967 a Writ of Certiorari was issued to the Common Pleas Court for the records of this case but the records were not made available to the court for review.

On November 17, 1967 the Appellee filed their entry of appearance in the Supreme Court of Pennsylvania.

On November 20, 1967, the Petitioner filed a Petition for Continuance to the April, 1968 session at Philadelphia.

On December 22, 1967, the Appellee filed their answer to the Petitioner's Petition for Continuance with New Matter. The Petitioner's copy was sent by ordinary mail and the mailing was delayed by the Appellee, therefore, when received by the Petitioner he had only two days, due to the Statute of Limitations, in which to respond to the New Matter. The New Matter was the Appellee's request to Quash the Appeal; therefore, it had great significance and importance not only with the Petitioner's Petition for Continuance but its affect upon the case No. 5528 in the lower court.

December 28, 1967, the Petitioner filed his reply to the Appellee's New Matter.

January 9, 1968, The Supreme Court filed an order denying the Petitioner's Petition for Continuance and granting the Appellee's request by Quashing the Petitioner's Appeal, Per Curiam.

January 19, 1968 the Petitioner's Petition for Reconsideration was denied February 19, 1968, per curiam.

REASONS FOR GRANTING WRIT.

The orders of October 10, 1967 in the Philadelphia Common Pleas Court #4 (Heard in Common Pleas Court #10) from which the Appeal to the Supreme Court of Pennsylvania arose are: Rule absolute to file Amended Answer, Rule to Consolidate is moot see stipulation filed September 29, 1967.

These orders did irreparable harm to the Petitioner's legal position in case #2696 because of their effect upon case #5528 due to the fact these cases were consolidated. C. T. L. #38802.

The Amended Answer changed the defendant's general denials in their original Answer to specific denials with averments in support thereof. Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial—shall have the effect of an admission. The defendant's admissions in their answer of pertinent and material facts in case #2696 was the basis upon which case #5528 was initiated and consolidated with case #2696.

The Rule absolute to file Amended Answer being an Interlocutory Order is usually non-appealable until the case is heard and final judgment rendered in the lower court, but in this instance the order is of such significance and importance that the Petitioner's legal position is jeopardized to the extent the order has taken the place of final adjudication without a trial and making any further hearing of this case moot.

When Petitioner filed his Appeal October 19, 1967 in the Supreme Court of Pennsylvania, a Writ of Certiorari was issued to the Common Pleas Court for the Records of this case, but the records were not made available to the Supreme Court of Pennsylvania for review. The Judge

of the Common Pleas Court whose rulings were being Appealed did not file an opinion on same or return his Acceptance of Service for filing. The Appeal was not argued or heard before the Supreme Court of Pennsylvania. The many irregularities, violations and breaches of the Rules of Civil Procedure by the Appellee in the lower court were not considered or reviewed. In view of the above mentioned facts, the Petitioner on November 20, 1967 filed a Petition for Continuance to the April, 1968 Session of the Supreme Court of Pennsylvania at Philadelphia.

The Appellee filed their answer to the Petition for Continuance which included their request to Quash the Appeal under the heading of New Matter. Due to the Appellee's delayed mailing of the Petitioner's copy of their answer with New Matter, the Petitioner had only two days, due to the Statute of Limitations, in which to respond. Because the Petitioner is not an attorney he feels that two days was not sufficient time to research the law on such an important matter in order to present a proper defense of his position.

The Petition for Continuance was denied January 9, 1968 and the Appellee's request under New Matter to Quash the Appeal was granted, Per Curiam. Petition for Reconsideration was denied February 19, 1968, Per Curiam.

It is well settled that the Fifth Amendment is made obligatory on the State Courts by the Fourteenth Amendment and includes not only the rights of due process of law but also guarantees persons within it's jurisdiction the equal protection of the law.

Because the Petitioner is not an attorney and acting as his own counsel in this case, he has suffered many indignities and set backs in the course of due process of the law which the Petitioner feels is a violation of the procedural due process and equal protection clauses of the Constitution. Also the Petitioner feels that in view of the

above mentioned violations the Substantive due process of the law has been violated; therefore, depriving him of life, liberty or property without due process of law as guaranteed by the Constitution. The Petitioner feels due to the circumstances the Petition for Continuance should have been granted.

In *Ungar v. Sarafite,* 376 U. S. 575 (1964), Mr. Justice White said at page 589:

> "Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend . . . an empty formality. Chandler v. Fretag, 348 U. S. 3. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process: The answer must be found in circumstances present in every case, particularly in the reasons presented to the court at the time the request is denied."

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN J. SCARSELLETTI—I.P.P.,
Attorney for Petitioner.

CERTIFICATE.

I hereby certify that the within Petition is filed in good faith and not for the purpose of delay.

JOHN J. SCARSELLETTI—I. P. P.,
Attorney for Petitioner.

APPENDIX.

IN THE
SUPREME COURT OF PENNSYLVANIA
FOR THE EASTERN DISTRICT.

No. 133—January Term, 1968.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

C. P. No. 4 (Heard in C. P. No. 10) for the
County of Philadelphia, No. 2696,
Sept. Term, 1965.

October 19, 1967—Appeal filed.

JOHN J. SCARSELLETTI,
Appellant, I. P. P.

November 20, 1967. Petition of Appellant for Continuance to April 1968 Session at Philadelphia, filed.

ORDER.

January 9, 1968. Petition for Continuance Denied and Appeal having been taken from a Interlocutory Order, is Quashed.

PER CURIAM.

IN THE

SUPREME COURT OF PENNSYLVANIA

FOR THE EASTERN DISTRICT.

No. 133—January Term, 1968.

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

C. P. No. 4 (Heard in C. P. No. 10) for the
County of Philadelphia, No. 2696,
Sept. Term, 1965.

October 19, 1967. Appeal filed.

JOHN J. SCARSELLETTI,
Appellant, I. P. P.

January 19, 1968. Petition of Appellant for Reconsideration of Order of January 9, 1967 denying continuance and quashing Appeal, filed.

ORDER.

February 19, 1968. Denied.

PER CURIAM.

IN THE

COMMON PLEAS COURT #4

(HEARD IN COMMON PLEAS COURT #10)

October 10, 1967

JOHN J. SCARSELLETTI

v.

AETNA CASUALTY & SURETY COMPANY

AETNA CASUALTY & SURETY COMPANY,

Petitioner.

September 14, 1967. Rule on the Plaintiff why Defendant may not file an Amended answer in this matter—filed.

ORDER.

October 10, 1967. Rule absolute to file amended answer.
October 10, 1967. Rule to consolidate is moot see stipulation filed Sept. 29, 1967.

Per. HON. EDWARD J. BRADLEY.